

ARTICLE 24 Submitted by: Charles Homer, To see if the Town will adopt the following Resolution:

WHEREAS Massachusetts in general and Metropolitan Boston in particular have a significant shortage of housing, contributing to the extraordinarily high cost of housing in our region, in response to which the Massachusetts Legislature in 2021 enacted the MBTA Communities Act (“MBTA-CA, MGL Chapter 40A, § 3A); and

WHEREAS the Massachusetts Department of Housing and Community Development (“DHCD”) has ~~enacted~~adopted guidelines that impose a December 31, 2023, compliance deadline for MBTA “Rapid Transit” communities such as Brookline to present zoning plans complying with the ~~so-called “MBTA Communities Act” (“MBTA-CA”), G.L. ch. 40A, § 3A,~~ as determined informed by application of a DHCD “Compliance Model”; and

WHEREAS Brookline’s Department of Planning and Community Development (“the Department”) was charged by the Select Board with developing a compliance plan that would meet both the letter and the intent of the MBTA-CA; and

WHEREAS the Department’s professional planning staff examined multiple alternative compliance strategies and shared them with the Select Board and the public; and

WHEREAS ~~Brookline’s the Department Planning and Community Development Department (“Planning Department”)~~ has developed a single strategy that would involve substantial rezoning of a ~~48-acre~~ district of at least 41 acres centered on the Harvard Street corridor ~~as well as and certain~~ neighboring streets; ~~but other options should be considered;~~ and

WHEREAS the Department has held multiple meetings and obtained the endorsement of the Planning Board, the Preservation Commission, the Housing Advisory Board, and the Economic Development Advisory Board for advancing the Harvard Street Corridor as the foundation for the Town’s response to the MBTA-CA; and

WHEREAS the Select Board on January 31, 2023, approved engaging a consultant to assist in developing a suitable “Form Based Zoning” approach for the proposed Harvard Street zoning district; and

WHEREAS the Select Board is closely overseeing the work of the Department, requiring regular updates to address concerns including those identified in the Select Board resolution of February 14, 2023, with respect to public engagement, commercial businesses, mixed-use development, parking, and inclusionary zoning; and

WHEREAS the Department is holding extensive public meetings and other means of community engagement concerning the development of the Town’s response to the MBTA CA; and

WHEREAS the Department is working closely with the Select Board and the Town’s legislative delegation to seek modifications in the statute or guidelines to improve their compatibility with Town policies; and

~~WHEREAS while it has been repeatedly claimed that there is no “up-zoning” contemplated, the Harvard Street strategy, in order to comply with DHCD guidelines, assumes the elimination of all parking requirements for new developments along Harvard Street, the elimination of any requirement for commercial or other publicly accessible space (e.g., retail, restaurant, personal services, professional services) even on the first floor, the elimination of floor-area ratio restrictions on density, and a 48-foot height limit rather than the existing staggered building height limits; and~~

~~WHEREAS all of these factors contribute to significant increases in permissible density from redevelopment that could seriously threaten existing businesses, commercial vitality and existing moderately priced housing; disrupt neighborhoods; and ignore the need for open space and the critical need to increase our tree canopy; and~~

~~WHEREAS, while the Harvard Street strategy is focused solely on pursuing MBTA-CA compliance by means of a new with the single 48-acre zoning district along and adjacent to Harvard Street, (which could, in fact, have to expand even further into neighboring streets), although the MBTA-CA and DHCD guidelines do not require a single area; and~~

~~WHEREAS the Department has indicated that alternative locations and provisions will continue to be considered;~~

~~WHEREAS the number of actual, existing multi-family (3-plus) units in Brookline already far exceeds the MBTA-CA “capacity” requirements, a fact not recognized by the DHCD guidelines; and~~

~~WHEREAS unlike the Harvard Street strategy, utilizing multiple areas in Town to comply with the MBTA-CA, including existing three-family and other multi-family districts or portions of other corridors, would not require the Town to impose potentially negative changes on the Harvard Street corridor and would not concentrate the potential for additional multi-family housing and the potential impacts on school population on only three elementary schools (Ridley, Lawrence and Pierce); and~~

~~WHEREAS recent successful rezoning efforts have been guided by resident committees with staff and consultant support, where the committees reflect appropriate technical skills along with representation from affected constituencies, to increase the credibility of their recommendations and the likelihood of acceptance by Town Meeting; and~~

~~WHEREAS the Harvard Street strategy and the chosen process raise significant concerns that could well result in the defeat of that strategy at the November 2023 Town Meeting and it would be imprudent for the Town to “put all its eggs in one basket” without having the option of fully considering other options for complying with the MBTA-CA; and~~

~~WHEREAS it is prudent to establish a resident-guided process that will, to the extent possible, ensure the development of alternative strategies for MBTA-CA compliance that could be utilized by themselves or in conjunction with a modified form of the Harvard Street strategy;~~

~~and that will involve public engagement and analysis of potential impacts of not only the Harvard Street strategy but also alternative strategies;~~

NOW, THEREFORE, BE IT RESOLVED that Town Meeting

A. Requests that the Select Board and the Town's legislative delegation ~~to initiate or~~ continue their efforts to seek appropriate modifications to the DHCD deadline and guidelines; and further

B. Requests that the ~~Moderator Select Board~~ to appoint a committee, which may include one or more members of the Zoning Bylaw Committee, to assist the Department of Planning and Community Development in identifying and considering potential alternative solutions for complying with the letter and intent of the MBTA Communities Act, in a manner timely to the applicable DHCD deadline~~to identify additional potential options for complying with the MBTA Communities Act;~~ and further,

C. Requests the Select Board to direct the ~~Planning~~ Department of Planning and Community Development ~~to provide staff support to the activity of the said committee. said Moderator's Committee in analyzing both the Harvard Street strategy's potential impacts, including impacts on Town and School services and risks to existing businesses, and other potential options for MBTA-CA compliance, including without limitation applying the DHCD Compliance Model and developing appropriate site plan review standards. Or act on anything relative thereto.~~

Or act on anything relative thereto.

## PETITIONERS' EXPLANATION

The purpose of this proposed amendment is to better reflect the actual process underway in Brookline with respect to the development of an MBTA Communities Act (MBTA-CA) compliance strategy.

As noted in the amended recitals, the Department of Planning and Community Development has already identified a series of different compliance strategies, which were shared with the public and the Select Board in December 2021, the Fall of 2022, and early 2023.

The Harvard Street strategy has been endorsed by the Planning Board, Preservation Commission, Housing Advisory Board, and Economic Development Advisory Board. The Select Board on January 31, 2023, decided to engage a Form Based Zoning consultant to advance the Harvard Street strategy. The state-mandated compliance deadline for Rapid Transit Communities (including Brookline) remains December 31, 2023; unless this deadline is modified by the state (which as of this writing has not occurred), MBTA-CA compliant zoning must be adopted at Brookline's 2023 Fall Town Meeting.

That said, there is on-going discussion among Town Meeting members and the general public with respect to alternative provisions of the proposed Harvard Street rezoning, alternative boundaries for the MBTA-CA compliant district, and alternative locations not contiguous to Harvard Street in which some or all of the required rezoning might occur. The Director of Planning and Community Development has stated publicly that the consideration of alternatives is an on-going process (including scheduled workshops in which the public will participate), and that the solution ultimately proposed may be a combination of the Harvard Street concepts discussed to date, the refinement of those concepts, and other elements.

The Select Board is overseeing the work of the Department, the work of its Form Based Zoning consultant, and their engagement with the public. To that end, the Select Board has directed the Department to provide them with monthly updates and to focus on specific areas of concern—a process that is visibly underway.

The Select Board has also joined Brookline's legislative delegation in seeking various clarifications and modifications to the state guidelines, to better align them with Brookline's existing policies. To that end, the Select Board sent DHCD a detailed letter, prepared by Department staff, dated \_\_\_\_\_, 2023.

The Warrant Article as originally proposed by the petitioners would call for the creation of a Moderator's Committee to conduct a search for alternatives—in effect, a parallel planning process alongside the work of the Select Board and Town staff, with finite staff resources diverted to support the research needs of this Moderator's Committee. By the time such a committee were formed, constituted, staffed, and operational, the likely result, whether intended or not, would be to delay the Town's effort in a way that would prevent timely compliance with the state deadline.

The alternative proposed in this amendment is to request that the Select Board appoint a committee of its own choosing, to help in the process of policy development that the Select Board is already actively overseeing. While reflecting a variety of views, this committee would “assist the Department of Planning and Community Development in identifying and considering potential alternative solutions for complying with the letter and intent of the MBTA Communities Act, in a manner consistent with timely compliance with the state law.”

We believe that if Town Meeting sees the need for any new committee, the formulation proposed in this amendment would best reflect the Town’s situation with respect to the MBTA Communities Act and its diligent efforts to comply responsibly, in letter and spirit.

### **Further Discussion**

The sponsors of the amendment further note that:

- The concern expressed in the original petitioners’ Explanation about the future of retail businesses and mixed-use development with ground-floor commercial use is widely shared, including by the sponsors of this proposed amendment. A principal factor *in favor* of the Harvard Street strategy is the need to bring more foot traffic and everyday vitality to this iconic “main street” corridor, where the effects of on-line shopping and the COVID pandemic are apparent.
- The Town and its legislative delegation are actively pursuing relief from the DHCD provision disallowing mandated ground-floor commercial use in an MBTA-CA compliant zoning district. Whether this pursuit is successful or not, it should be understood that the MBTA-CA and the DHCD guidelines expressly allow both commercial and mixed-use development to be permitted as-of-right in MBTA-CA zoning districts and to be incentivized, as the Town proposes to do.
- The argument in the original petitioners’ Explanation that the DHCD guidelines allow site plan review with respect to a project’s “appearance and layout, vehicular access and circulation, screening of adjacent properties, and the architectural design of a building” is correct. Such review—based on form-based standards that Brookline currently lacks—is a principal feature of the Planning Department’s proposed Harvard Street strategy.

The sponsors of the proposed amendment concur with other factual points contained in the original petitioners’ explanation, including:

- *Brookline is not required to create a single...district to comply with the MBTA-CA. [...] The DHCD guidelines require Brookline to have a “minimum land area” of 41 acres with “multifamily unit capacity” of 6,990 units (25% of the Town’s current number of units) as determined by a DHCD “Compliance Model.”[...] The Town, however, is not required to*

concentrate the impact of the MBTA-CA on only one “mega district.” The DHCD guidelines actually state, for example, that

- “[i]f an MBTA community has two or more zoning districts in which multi-family housing is allowed as of right, then two or more districts may be considered cumulatively to meet the minimum land area and minimum multi-family unit capacity requirements”;
  - “no portion of the district that is less than 5 contiguous acres [of] land will count toward the minimum [land] size requirement”; and
  - “at least half of the multi-family zoning district land areas must comprise contiguous lots of land.”
- DHCD guidelines also allow the inclusion of areas that are already developed and do not limit “capacity” calculations to lots that are vacant. Thus, the guidelines make clear that
    - “[n]othing...should be interpreted as a mandate to construct a specified number of housing units, nor as a housing production target”;
    - “capacity” simply means “that a sufficient number of multi-family housing units could be added to or replace existing uses and structures over time – even though such additions or replacements may be unlikely to occur soon”; and
    - all privately owned property, even if already developed, can be included in calculating “capacity” unless development is prohibited to protect private or public water supplies or the property is used for institutional uses such as a hospital, utility, or private school, college or university.